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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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| BLENDTEC INC. , a Utah corporation Plaintiff, v. BLENDJET INC. , a Delaware corporation Defendant. | BLENDTEC’S RESPONSE TO BLENDJET’S MOTION FOR SHORT FORM DISCOVERY Civil No. 2:21-cv-00668-TC-DBP Judge Tena Campbell Magistrate Judge Dustin B. Pead |
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In response to RFP 44, Blendtec agreed to produce “documents related to the marketing and branding services performed” by Enlisted and BYU. ECF 91-1 at 10. Enlisted provides consulting services. BYU directed a student project that Blendtec facilitated. **Blendtec produced all responsive non-privileged documents after a reasonable search** (~240 documents, and many times that number of pages). **Blendtec is not withholding responsive documents.** See ECF 91-4 at 6. Enlisted and BYU have also produced thousands of pages responsive to Blendjet’s

subpoenas. *See* ED1-7138; BYU1-918. Collectively, ~10,000 pages related to BYU and Enlisted have been produced. **There is nothing to compel.**

Blendjet’s “supplemental” ESI email requests, ECF 91-2 and 91-3 (“ESI Requests”), are untimely.¹ **Exh. A** (Blendtec’s Objections).² The untimely ESI Requests identify “enlisted,” “byu,” and “brigham young” as new search terms for four custodians. ECF 91-2. The last day to serve written discovery was January 23, 2023. ECF 35; ECF 90 at 2. Blendjet served the ESI Requests on February 28, *more than one month after the deadline*. Blendjet’s argument that ESI Requests are not governed by the Scheduling Order or Rule 34 is disingenuous; “Federal Rule 34” expressly applies to the ESI Protocol (ECF 33, ¶73) and Blendjet issued its ESI Requests “[p]ursuant to Federal Rules of Civil Procedure 26 and 34” (ECF No. 91-2 at 2).

Nothing new or unexpected justifies serving untimely requests. Blendjet was aware of Enlisted and BYU (and all identified custodians) months before the written discovery deadline. **Exh. A** (highlighted text). Blendjet could have issued its ESI Requests before January 23, but did not. Written discovery should not be dragged out any longer because Blendjet submitted untimely ESI Requests.

Finally, even if the ESI Requests were not untimely, they are still improper as to two of the ESI custodians at issue because they push Blendjet over the numerical limit on search terms permitted by the ESI Protocol. **Exh. A** at 6, 10.

Blendjet has thousands of pages related to BYU and Enlisted, which are, at best,

¹ Blendjet knows Blendtec is not withholding responsive documents, but included RFP 44 in the Motion in a failed attempt to shoehorn its untimely ESI Requests into RFP 44.

² Blendjet’s “Second” Supplemental requests added new search teams “blendfresh” and “blend fresh” for an ESI custodian. ECF 91-3.

tangentially related to the trademark infringement issues. Blendjet's ESI Requests are untimely. Granting Blendjet's Motion would result in more delays and would not be proportional to the needs of the case. If the Court sanctions Blendjet's Untimely ESI Requests, forcing Blendjet to start email searches afresh after the deadline for serving written discovery, Blendtec requests that the costs of the untimely requests be shifted to Blendjet pursuant to the ESI Protocol. *See* Exh. A at 4.

DATED this 14th day of April, 2023.

Attorneys for Plaintiff Blendtec Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2023, a true and correct copy of the foregoing document was served on counsel of record via the Courts CM/ECF System which sent notice to counsel of record:

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